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C O N F I D E N T I A L SECTION 01 OF 03 SARAJEVO 000566

SIPDIS

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SUBJECT: BOSNIA - DODIK'S CAMPAIGN AGAINST "TRANSFERRED
COMPETENCIES"

REF: A. SARAJEVO 251

[1](#)B. 07 SARAJEVO 1058

Classified By: Ambassador Charles English. Reasons 1.4(b) and (d).

[1](#)1. (C) SUMMARY. On April 23, the Republika Srpska National Assembly (RSNA) began a debate on the "effects of the transfer of constitutional competencies from the RS to the institutions of Bosnia and Herzegovina." The debate, which will continue on May 14, is part of a long campaign dating back to 2007 by RS PM Dodik and senior RS officials designed to delegitimize the state and state-level institutions and to undercut reforms implemented with the strong support of the international community. As part of this campaign, Dodik has grossly inflated the number of competencies that have actually been transferred; there have only been four competency transfers, but Dodik claims that there have been 68 (this number includes state institutions established to fulfill state competencies provided for in Dayton). At first, Dodik openly advocated for the return of "competencies" that RS officials believed could be carried out more effectively at the entity level (i.e., most, if not all of them), but he and his allies now suggest that the vast majority were transferred illegally, implying that the RS has the authority to simply take them back. Dodik's attempts to set up parallel institutions in the RS (e.g., the RS Missing Persons Institute, Law on Fiscal Cash Registers, which duplicates reporting required by the Indirect Taxation Authority) or to dismantle other state-level bodies (e.g., Transco, Ref A) should be considered in this context. At the same time Dodik has pledged that additional competency transfers will not take place, stressing that defending the RS is more important to him than EU accession if moving towards the EU requires additional state-building reforms (as it inevitably will). The logical implications of Dodik's line of argument about competency transfers is that he and his government want to, at a minimum, create an RS that looks much like the RS that existed immediately after the 1992-1995 war. Coupled with his frequent speculation about an RS future outside Bosnia, such as his April 24 comment to Radio Free Europe that the RS would someday follow Kosovo's path towards independence, his campaign against the "competency transfers" looks more insidious still. END SUMMARY.

The Origins of the RS Campaign Against Competency Transfers

[1](#)2. (SBU) In May 2007 press conference, Dodik announced his intent to begin the process of "abolishing prior RS government consent" to past transfers of competencies to the state (Ref B). At the time, Dodik declined to list the specific competencies he wanted returned to the RS, but

claimed he was motivated by the state's failure to adequately perform the duties allegedly transferred to it. Four days later, Dodik ally and then Speaker of the state-level House of Representatives (HoR) Milorad Zivkovic claimed that more than 48 competencies had been transferred by the RS to the state. Zivkovic also announced that he and other Alliance of Independent Social Democratic (SNSD) MPs would challenge the constitutionality of these transfers. (Note: In fact, only four competencies have been transferred to the state, all of them legally: defense, indirect taxation, judicial matters associated with the High Judicial and Prosecutorial Council, and electricity transmission, i.e., Transco. End Note).

Turning up the Heat: From Issues of Efficiency to Legality

¶3. (SBU) Over the next two years, Dodik and his allies have steadily ratcheted up their rhetorical attacks on state-level institutions and their allegations about the nature of alleged competency transfers and their number. Dodik's arguments against alleged competency transfers became lengthier, and in some instances legally more sophisticated (though not legally accurate), but the intent has remained the same: to discredit and delegitimize the Bosnian state and state-level institutions. For example, Dodik began to argue that competencies were transferred "under enormous pressure and threats of sanctions" by the international community, particularly OHR, in order to punish the RS and Bosnian Serbs. The implication was that the method of creation of state-level institutions made their creation and the RS-claimed competency transfers illegal.

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Making a List and Checking it Twice

¶4. (C) In August 2008, Dodik tasked his government to develop a list of all competencies transferred to the state between 2000 and 2007 and to analyze their efficiency, which he pledged to put before the RSNA for consideration. In February 2009, the RS Government completed work on its list, claiming that 68 transfers had occurred. The list included the four actual competency transfers, but the majority of items were either competencies expressly listed in the constitution as belonging to the state (e.g., border control, immigration and asylum matters) or responsibilities not expressly mentioned in the constitution but assumed by the state in order to fulfill its constitutional obligations (e.g., travel documents, citizenship, and intelligence.) The list also included a number of responsibilities that had already been considered and decided by Bosnia's Constitutional Court in favor of the state, including statistics, procurement, and the border service.

The RSNA Debate on Transfers Begins

¶5. (SBU) In March 2009, the RSNA adopted RS President Rajko Kuzmanovic's declaration on the basis for future constitutional reform discussions. The declaration states that after an analysis of the efficiency, functionality and economic performance of already transferred competencies, "the RS may initiate a process for the return of competencies whose transfer proves to be neither justified nor sustainable." On April 23, the RSNA addressed the issue of competency transfers directly. Dodik set the tone in an extended speech in which he put forward his government's claim that 68 competencies had been transferred, "the vast majority illegally" and "under pressure and threats." During the same speech Dodik provocatively claimed that Bosniaks were arming themselves and calling for the expulsion of Serbs and Croats from Bosnia. He labeled Bosnia "an un-proclaimed protectorate of the international community" and said that the closest explanation of the status of government in Bosnia is "usurpation and occupation."

¶6. (C) Dodik emphasized that the RS - as one of the parties to Dayton - had not given permission for the High Representative to have additional powers (i.e., the Bonn Powers) for such things as passing laws, removals, giving orders, etc. In one of his most blatant public claims yet in an official venue, Dodik asserted that a number of the HighRep's acts were "legally null and void." He added that there is no legal basis for the Peace Implementation Commission (PIC) to be involved "in the detailed administering of internal affairs of a sovereign country," adding that PIC communiques "do not possess legal power or effect." After Dodik finished his remarks, Serb MPs from both the government and the so-called opposition stood and threw their wholehearted support behind Dodik on these issues.

Vasic Underscores, Crudely, Dodik's Point

¶7. (SBU) While Dodik was making speeches rife with pseudo-legal analysis in the RSNA, he had SNSD Executive Secretary Rajko Vasic bring the message home to the RS public using more earthy language. Vasic is infamous for using hateful vitriol to drive home SNSD messages, but recently he crossed the line of decency. In an April 24 posting to his blog, which was subsequently reprinted in the RS daily Fokus, Vasic stated that when Dodik was not in power, RS authorities were "wearing underwear without elastic, keeping them up with one hand, so they could easily pull them down whenever (former HR Paddy Ashdown) wanted to have intercourse with them, marked as a transfer of competencies." He added that past transfers were "illegal procedures." Vasic stated that the "establishment of new joint institutions is out of the question." He concluded that "competencies that had to be transferred to BiH, and do not belong to it, and joint institutions that were not imposed by or agreed to in Dayton, will prove fatal to BiH. Sooner or later."

Dodik: The RS Will Follow Kosovo Someday

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¶8. (C) Perhaps due in part to our repeated warnings, Dodik has been more restrained on the issue of the RS's future in recent months. However, in an April 24 interview for Radio Free Europe, just one day after the RSNA debate on competency transfers, Dodik let his guard down and returned to the theme of a possible RS future outside Bosnia. In response to a question about Kosovo's independence, Dodik said that "it remains to be seen if there will come a day when conditions will be created for the RS to make such decisions." He added that "I am personally convinced that it will." (Note: Dodik's key advisors have said the same thing to us privately. In separate meetings, each has used the same analogy to describe Bosnia and the RS's future. They compare Bosnia to a marriage between two people that is not working; in this case between the RS and the Federation. They assert that the RS has "tried to make it work," but that "it can't work." They conclude by arguing that the time will come for a divorce. End Note).

Comment

¶9. (C) Dodik's attacks on "competency transfers" strike right at the heart of whether Bosnia will ever become a functional state or remain dysfunctional, and ultimately, wither on the vine. His arguments about competency transfers have been deliberately misleading and have grown increasingly insidious over the last two years. To begin with, many of the state-level institutions he attacks exist in order to provide the state with the institutional capacity it requires to implement the competencies provided to it under Dayton. The state could not be expected to manage immigration, refugee and asylum policy without a Foreigners Affairs Service, for

example. A genuine commitment to Dayton, which Dodik and the Serbs often profess, would mean supporting the work of these bodies. Instead, Dodik and his allies have often sought to undermine them, and then argue, as Dodik did in when he launched his campaign against competencies, that the resulting inefficiencies requires the "return" of competencies to the RS.

¶10. (C) Dodik and his allies have progressed from complaining about the poor performance of state-level bodies to arguing, in effect, that many of them are either illegitimate, illegal, or both because OHR pressed the Serbs to support their establishment or the HighRep used his Bonn Powers to create them. The legal implications are clear: these bodies can be ignored, or worse. Although Dodik's rhetoric sounds like absurd posturing to outsiders, the RS public takes it at face value and sees him as the RS's defender. At a minimum, this creates a climate within the RS that makes it impossible for any politician, including Dodik, to make the compromises, including on state-building reforms, necessary to move Bosnia closer to NATO and the EU (which is at the heart of our strategy for ensuring Bosnia's security and stability). More dangerously, it creates a climate where Serbs see the state as an enemy and raises hopes among the RS public that at some point, Dodik's "legal arguments" will prevail and the RS will finally secure its divorce; hopes that are further raised by Dodik's regular speculation about such a possibility.

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